Lincoln, NE 1/24/00
Exhibit 1-1
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EIS001045

Statement of
Mike Johanns
Governor of Nebraska

Regarding The U.S. Department Of Energy's Office Of Civilian Radioactive Waste Management
Draft Environmental Impact Statement For A Geologic Nuclear Waste Repository At Yucca Mountain, Nevada

Ramada Inn Airport
Lincoln, Nebraska

January 24, 2000

I am pleased to submit this statement on behalf of the State of Nebraska regarding the Yucca Mountain Environmental Impact Statement (EIS) recently released by the U.S. Department of Energy. As a likely major corridor state for *Nuclear Waste Policy Act* (NWPA) shipments to Yucca Mountain, Nebraska is very interested in the progress and development of the Department's spent nuclear fuel and high-level radioactive waste transportation program, especially the issues of mode and route selection and preparation of states and tribes under Section 180(c) of the *Nuclear Waste Policy Act*.

1 Nebraska supports the national policy for permanent, safe, geologic disposal as an appropriate means of managing and finally disposing of spent nuclear fuel and high-level radioactive waste. As of today, however, the Department of Energy's Office of Civilian Radioactive Waste Management has made little or no progress in working with affected states and tribes to develop an acceptable transportation plan or to identify shipping modes and routes to be used by contractors for shipments.

Nebraska, and other western states acting through the Western Governors' Association, has consistently provided the Department with comments on the priorities of the West regarding an *NWPA* transportation program, including among others: (1) full scale cask testing; (2) mode and route analysis; (3) implementation of a program to provide financial and technical assistance to states and tribes under Section 180(c) of the *NWPA*; (4) potential negative impact from privatizing key transportation public policy decision-making responsibilities; (5) use of the WIPP program as a model in radioactive waste transportation planning; and (6) the assessment of terrorism concerns.

2 The Office of Civilian Radioactive Waste Management's record in addressing the
3... concerns identified by western governors has been unresponsive, and Nebraska is very concerned that the current draft Yucca Mountain EIS does not meet the requirements of the

3 cont. *National Environmental Policy Act* in assessing the transportation impacts involved with shipping radioactive waste to Yucca Mountain under the *NWPA*. I would like to focus my comments today on one of the most crucial aspects of the EIS — the analysis and selection of transportation modes and routes for shipments of spent nuclear fuel and high-level radioactive waste under the *Nuclear Waste Policy Act*. The importance of timely mode and routing analysis and selection in an *NWPA* shipping campaign is also reflected in Resolution 99-014, which is a comprehensive nuclear waste transportation resolution passed last June by the Western Governors' Association. Almost identical resolutions have been adopted by the WGA since 1985. I am including the text of Resolution 99-014 as part of my comments for the record.

4 **The Department of Energy Must Conduct Route-Specific Analyses for *NWPA* Shipments as Promised in the 1986 Yucca Mountain Environmental Assessment**

Nebraska is disappointed that the Department of Energy has failed to honor the representation it made years ago to stakeholders that it would conduct comprehensive assessments of potential transportation routes to be used in transporting spent nuclear fuel and high-level radioactive waste to any potential repository. Specifically, in Volume III of the Department's Yucca Mountain Environmental Assessment, which was conducted in 1986, the Department stated that "[t]he DOE believes that the general methods and national average data used are adequate for this stage of the repository-siting process. Route-specific analyses and an evaluation of the impacts on host States and States along transportation corridors **will be included in the environmental impact statement** (emphasis added). The route-specific analyses to be performed in the future will proceed in the following sequence: (1) define important parameters; (2) gather data; (3) develop models as required; (4) perform analysis; (5) consider mitigating measures; (6) report results."

The draft EIS completely fails to meet the promise made in the 1986 Environmental Assessment, and provides no route-specific analyses and no specific evaluation of the impact on states along transportation corridors or mitigating measures. Instead, the draft EIS states only that "[a]t this time, about 10 years before shipments could begin, the Department has not determined the specific routes it would use to ship spent nuclear fuel and high-level radioactive waste to the proposed repository...this analysis used current regulations governing highway shipments and historic rail industry practices to select existing highway and rail routes to estimate potential environmental impacts of national transportation. Routing for shipments of spent nuclear fuel and high-level radioactive waste to the proposed repository would comply with applicable regulations of the Department of Transportation and the Nuclear Regulatory Commission in effect at the time the shipments occurred...." (EIS, Appendix J, J-23)

Nebraska and other western states expect the Department to honor the promise it made in the 1986 Environmental Assessment, and request that the Department issue a revised draft EIS which provides route-specific analyses and a careful evaluation of the impacts on states along transportation corridors.

5 **The Department Needs to Designate Shipment Corridors to Allow Nebraska to Properly Focus its Training and Emergency Response Resources**

Nebraska believes that reliance on current highway routing regulations and historical rail routing practices to determine transportation routes will promote higher costs and reduced efficiency. Highway routing regulations, for example, would allow the use of virtually the entire Interstate highway system for nuclear waste shipments to Yucca Mountain. Especially when shipments cover long distances, as would be the case with *NWPA* shipments, multiple combinations of Interstate highways would be allowable under the Department of Transportation regulations. The expenditure of Nebraska's resources preparing for an unknown number of shipments which may or may not cross our state makes little sense, and could be a potential waste of resources which could be much better used elsewhere. Such uncertainty in shipment routing could also hinder the effectiveness of any needed emergency response.

6 With regard to rail routing, the historical route selection practices of railroads are primarily based on commercial needs — not necessarily on safety concerns. For example, in order to maximize revenues, it is standard industry practice for an originating railroad to maximize the distance a shipment will travel on its system before transferring the shipment to the next railroad regardless of track consideration or overall route safety. Nebraska does not believe that reliance on such practices will result in the safest routes being selected.

7 As stated in Resolution 99-014, Nebraska believes the Department must abandon its reliance in the EIS on current highway routing regulations and historical rail routing practices. Instead, the Department must: (1) prepare a comprehensive transportation plan that includes the analysis of all needed transport-safety activities in a single document; (2) develop responsible criteria for selecting shipping routes; and (3) develop a sound methodology for evaluating optional mixes of routes, and transportation modes.

8 In addition, Nebraska continues to believe that the Department must look to the Waste Isolation Pilot Plant transportation and cesium capsule return programs for guidance in conducting any large scale radioactive waste shipping campaign.

9... **The Department Needs to Analyze and Select the Transportation Mode for NWPA Shipments**

The draft EIS also fails to appropriately analyze and select a preferred transportation mode for *NWPA* shipments. The choice between the use of rail (and type of rail service) or truck for the transport of nuclear waste under the *NWPA* will have a major impact on the number of shipments which will cross our state. Assuming, for example, that the Department operates under the capabilities currently available, an estimated 79,300 legal weight truck casks and 12,600 rail casks would be shipped on the nation's highways and railroads. If the Department were to rely heavily on rail, however, highway shipments could be significantly

9 cont. reduced to approximately 1,150 high-capacity cask shipments.[1] This tremendous potential disparity in shipment numbers is of great concern to Nebraska since we are a likely major corridor state for *NWPA* shipments.

Modal selection also fundamentally affects the choice of routes and populations affected. For instance, if it is decided that *NWPA* shipments are to travel by truck, then it is likely that thousands of nuclear waste shipments will pass through some of our state's most heavily populated areas, including Omaha and the state capital of Lincoln. Before any such shipments can be made, the citizens of Nebraska expect an explanation of the data and analyses which the federal government has used to justify selecting their city or home town as a thoroughfare for thousands of shipments of nuclear waste. Such a justification must include a detailed analysis which explains why the mode — and route — selected is prudent.

The analysis in the draft EIS, however, is limited to two generic analyses, including a "mostly legal-weight truck" and "mostly rail" scenario. The EIS acknowledges its own limitations in a somewhat peculiar fashion by stating that "the Department does not anticipate that either the mostly legal-weight truck or the mostly rail scenario represents the actual mix of truck or rail transportation modes it would use. Nonetheless, DOE used these scenarios as a basis for the analysis of potential impacts to ensure the analysis addressed the range of possible transportation impacts." (Draft EIS, 6-18) Because modal selection will have a major impact on routing decisions and on the populations affected by *NWPA* shipments, it is poor judgement to attempt to base the analysis of *NWPA* modal selection on data that has very little factual basis.

10 Instead, Nebraska recommends that the Department abandon its generic assessment of transportation impacts and revise the current draft EIS to include route and mode-specific analyses and an evaluation of the impacts on states along transportation corridors. Without such route and mode-specific assessments, Nebraska believes that the draft EIS fails to meet the requirements of the *National Environmental Policy Act* to properly assess the transportation-related impacts of potential radioactive waste shipments under the *NWPA* program.

Conclusion

Thank you for the opportunity to discuss Nebraska's and other western states' concerns with the Department's draft Yucca Mountain EIS. I hope these observations will help the Department produce a much improved EIS in the near future.

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[1] *The Transportation of Spent Nuclear Fuel and High-Level Waste: A Systematic Basis for Planning and Management at National, regional, and Community Levels*, Planning Information Corporation (September 1996).

Western Governors' Association

Policy Resolution 99 - 014 **EIS001045**

Transportation of Spent Nuclear Fuel and High-Level Radioactive Waste

June 15, 1999

SPONSORS: Governors Guinn and Leavitt

A. BACKGROUND

1. This nation must dispose of significant amounts of spent nuclear fuel and high-level radioactive waste.
2. The federal government is responsible for the disposal of these wastes under the Nuclear Waste Policy Act (NWPA).
3. Plans of the federal government place a disproportionate share of the national burden of nuclear waste transportation on Western states.
4. The Governors recognize that a transportation program developed and implemented cooperatively with Western states, such as that used for recent cesium shipments and that being planned for shipments to the Waste Isolation Pilot Plant, can be developed with proper planning and commitment by the federal government.
5. Litigation and proposed federal legislation have increased pressure on the federal government to accept private reactor spent nuclear fuel under the NWPA, well before the Department of Energy's (DOE) plans to accept waste in 2010.
6. The analysis by and experience of Western states show that adequate preparations cannot be in place to accommodate large scale shipments for at least three years following the designation of routes and shipping modes.
7. For many years, Western Governors have consistently urged the federal government to develop a comprehensive transportation plan, including the preparation of contingency plans for events such as the early shipment of waste.
8. DOE has not prepared a comprehensive transportation plan and has no effective contingency plans to accommodate shipments.
9. The Secretary of Energy has recently proposed a plan whereby DOE would provide for temporary storage of spent fuel at commercial nuclear power plant sites until such a time as a permanent repository is available for disposal of the spent fuel. This plan would compensate utility companies for the cost of storing the waste on-site, address DOE's failure to meet its deadlines under the Nuclear Waste Policy Act of 1982, as amended, and provide much needed flexibility within the federal high-level waste program for carrying out scientific activities and conducting required transportation planning.

B. GOVERNORS' POLICY STATEMENT

Storage and Disposal

1. The Western Governors' Association supports the national policy for permanent, safe, geologic disposal as an appropriate means of managing and finally disposing of spent nuclear fuel and high-level radioactive waste.
2. The Governors strongly encourage the U.S. Department of Energy to work cooperatively with the states in implementing this policy; to ensure the safe storage, transportation and

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13 cont. disposal of spent nuclear fuel and high-level radioactive waste; and to comply with agreements which have been negotiated and entered into by a state's governor regarding the management, transportation and storage of spent nuclear fuel and high-level radioactive waste. Moreover, the federal government should not site such waste in a state for interim storage without written agreement from the affected states' governors.

3. The Governors support efforts by the federal government to examine alternative waste acceptance options, including but not limited to, providing funds to utilities for expanded on-site storage and taking title to spent nuclear fuel at individual reactor sites. The search for alternatives must not be construed as lessening the need to develop a permanent solution to the management of spent nuclear fuel.

Transportation

14... 4. The Governors' objective is the safe and uneventful transport of nuclear waste which must be paramount in all federal policies regarding nuclear waste transportation.

5. The Governors find that as a result of federal government inaction and delays, and inadequate strategic planning involving stakeholders, a national transportation system for commercial spent nuclear fuel is not presently available and would, at the earliest, be available no sooner than three years after routes have been identified and technical assistance and funds have been provided to states.

17 6. Early coordination and effective communications with state, tribal, and local governments is essential to the ultimate success of any nuclear waste transportation safety program.

18 7. In order to develop a safe and effective system for accepting commercial spent nuclear fuel and high-level radioactive waste (HLW), the federal government must expand its focus beyond siting, and develop, in coordination with the states and tribes, a logical and timely transportation program. This requires DOE policy commitments to:

   a. fix the shipping origins and destination points as early as possible;
   b. ensure the availability of rail and truck shipping casks;
   c. conduct full-scale testing of casks to be used to transport spent nuclear fuel and high-level radioactive waste;
   d. prepare a comprehensive transportation plan that includes the analysis of all needed transport-safety activities in a single document;
   e. develop responsible criteria for selecting shipping routes; and
   f. develop a sound methodology for evaluating optional mixes of routes, and transportation modes.

19 8. The Governors believe that DOE must look to the Waste Isolation Pilot Plant (WIPP) transportation and cesium capsule return programs for guidance in conducting any large scale radioactive waste shipping campaign:

   a. A safety and public information program similar to that developed with Western states for shipments of transuranic waste to WIPP and cesium capsules to Hanford should be utilized for all route-controlled DOE shipping campaigns. Safety programs should be evaluated and improved as needed.
   b. The WIPP Transportation Safety Program Implementation Guide is an excellent framework for transportation planning, and a similar document should be used as a base document for DOE's various transportation programs.
   c. DOE should follow the WIPP example of working through its regional cooperative-agreement groups to propose a set of shipping routes to affected states and tribes for their review and comment. This process should result in the identification of a set of primary and secondary routes from each site of origin to

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19 cont. each destination. DOE should require the use of these routes through mandatory contract provisions with any private contractors.

d. DOE should work to identify flexible funding resources and cooperative agreements between their civilian, power and defense agencies as a means for supporting WGA and DOE application of lessons learned through the WIPP safety program to other DOE shipping campaigns.

20 9. DOE shall operate a tracking system capable of monitoring the location and status of the vehicle and cask. The system should have a communications capability for notifying the vehicle operator, DOE, and states and tribes of the location, potential bad weather and road conditions, and occurrence of incidents.

Financial and Technical Assistance Responsibilities

15 10. Governors believe it is the responsibility of the generators of spent nuclear fuel and HLW and the federal government, not the states and tribes, to pay for all costs associated with assuring safe transportation, responding effectively to accidents and emergencies that will inevitably occur, and otherwise assuring public health and safety.

21... 11. The Governors insist that no shipments of spent nuclear fuel and HLW be made to storage facilities or a repository, until DOE has cooperatively identified shipping routes and Section 180 (c) funds and assistance have been made available to states at least three years prior to the start of shipments, notwithstanding whether such facilities are publicly or privately owned or whether there are any sudden changes in DOE's shipping schedule.

12. Critical steps need to be taken to prepare states and tribes for shipments, including but not limited to:

a. Appropriate funds for technical assistance and training programs for states and tribes through whose jurisdictions spent nuclear fuel and HLW are to be transported;

b. Implement policies and procedures for Section 180 (c) of the NWPA to assure that states are fully compensated for all training, preparedness, and response costs associated with spent nuclear fuel and HLW shipments within their borders. Funding formulae for Section 180 (c) assistance to states must not be based on arbitrarily established DOE criteria, but on state-specific assessments of need funded under Section 180 (c);

c. Adopt regulations to implement a mutually acceptable program of technical assistance and training funds. Such regulations should:

1. Provide for the development and funding of state and tribal plans that identify the minimum elements necessary to ensure safe routine transportation and procedures for dealing with emergency response situations, the current capabilities along each corridor, the activities needed to achieve minimum elements, and performance measures to evaluate programs implemented under the plan.
2. Provide annual implementation grants to states and tribes with 75 percent of the grant funds allocated according to the number of projected shipment miles in the jurisdiction and 25 percent of the funds allocated by the Secretary to ensure minimum funding levels and program capabilities among impacted states and tribes.
3. Provide flexibility in the expenditure of Section 180 (c) funds by states and tribes pursuant to the provisions of the state or tribal plan.
4. Establish Regional Training Advisory Teams of states and tribes to review

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21cont. and coordinate plans along shipment corridors and a National Training Advisory Committee to report to the Department of Energy on progress and needed additional actions.

Privatization

16 13. In any Nuclear Waste Policy Act shipping campaign, the Department of Energy cannot privatize or delegate to a contractor key transportation responsibilities, including but not limited to:
   a. Interaction with states and tribes;
   b. Selection of transportation modes and routes;
   c. Preparation of environmental impact statements addressing transportation concerns;
   d. Selection of transportation casks;
   e. Working with states and tribes to develop acceptable transportation communication, training and security plans; and
   f. Decisions regarding the provision of adequate technical assistance and funding to states and tribes to prepare for shipments.

C. GOVERNORS' MANAGEMENT DIRECTIVE

1. This policy resolution shall be conveyed to the President, the Secretaries of Energy and Transportation, the chairman of the Nuclear Regulatory Commission, and the appropriate members and committees of Congress.
2. The WGA staff, in cooperation with the Western Interstate Energy Board, shall monitor implementation of this resolution and inform the Governors of progress towards meeting the Governors' objectives. WGA and WIEB are to provide the federal government and nuclear utility industry with assistance in the development and implementation of transportation, communications and security plans for spent nuclear fuel and high-level radioactive waste.

Originally adopted as Policy Resolution 98 - 005 in 1998.

Governors Kitzhaber and Kempthorne voted in opposition to the amendment of 98-005 as adopted in 1998.

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